

Nancy K. Wactor,)	
)	C/A No. 8:11-3167-TMC
Plaintiff,)	
)	
v.)	ORDER
)	
)	
Jackson National Life)	
Insurance Company,)	
)	
Defendant.)	

In her motion, Wactor primarily contends that the court misconstrued her argument

regarding waiver. (ECF No. 51-1 at 1).¹ Wactor contends that the evidence shows that over the life of the insurance policies, Jackson National sent late notices 22 times and on those 22 occasions Decedent “apparently” received the notices. (ECF No. 51-1 at 2). She further contends that Jackson National established a course of dealing on those 22 occasions of sending a notice “and having [Decedent] receive the Notice” (ECF No. 51-1 at 3).²

While a waiver may be implied and follow from a course of dealing or conduct, Wactor has not established the requirements of waiver in regard to the receipt of the notices. A waiver constitutes “a voluntary and intentional abandonment or relinquishment of a known right.” *Janasik v. Fairway Oaks Villas Horizontal Prop. Regime*, 415 S.E.2d 384, 387 (S.C. 1992). “Generally, the party claiming waiver must show that the party against whom waiver is asserted possessed, at the time, actual or constructive knowledge of his rights or of all the material facts upon which they depended.” *Id.* at 387-88.

First, there is no evidence as to how Jackson National sent the prior notices, i.e. that the prior notices were sent with Jackson National requiring notice of their receipt. Second, there is no evidence in the record that Decedent actually received the notices in the past; indeed Wactor herself notes that Decedent “apparently” received the notices on 22 prior occasions. While the court agrees that Jackson National may have established a course of dealing and waived its right to cancel during the grace period by mailing the lapse notices, the intent to waive its right to

¹As to other issues, Wactor merely reasserts her earlier arguments and, in fact, specifically relies on her earlier memorandum. (ECF No. 55-1 at 5). “Because of the interests in finality and conservation of judicial resources, Rule 59(e) motions are not at the disposal of an unsuccessful party to rehash the same arguments and facts previously presented.” *Keyes v. Nat’l R.R. Passenger Corp.*, 766 F.Supp. 277, 280 (E.D.Pa. 1991) (internal citation and quotations omitted). Accordingly, the court will not address these issues.

²Wactor also contends that once a course of dealing establishes a duty to provide notice, *Edens v. South Carolina Farm Bureau Mut. Ins.*, 208 S.E.2d 670 (S.C. 1983), becomes relevant. (ECF No. 51-1 at 5). As in the prior order, the court finds *Edens* inapplicable when there is no ambiguous provision in the insurance contract.

cancel based upon receipt cannot be established through Jackson National's prior conduct.³

After a careful review of the record, the court concludes that no legally sufficient basis exists to alter or amend the court's July 10, 2013 Order. Plaintiff has failed to show any intervening change in controlling law, offer any new evidence, or show clear error of law or manifest injustice. Accordingly, Plaintiff's Motion for Reconsideration is denied.

Conclusion

For the foregoing reasons, Plaintiff's Motion for Reconsideration (ECF No. 51) is **DENIED.**

IT IS SO ORDERED.

s/Timothy M. Cain
United States District Judge

Anderson, South Carolina
October 8, 2013

³In her reply to Defendant's response to the motion to reconsider, Wactor for the first time contends that Jackson National cannot rely on a computer log to establish that it mailed the notices because the computer log is "flawed, suspect and erroneous." (*Id.* at 3, 4). The court need not address this new argument because Wactor cannot use a Rule 59(e) motion to raise new arguments.